

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KEVIN SELKOWITZ, an individual

Plaintiff,

v.

LITTON LOAN SERVICING LP, a
Delaware Limited Partnership; NEW
CENTURY MORTGAGE
CORPORATION, a California
Corporation; QUALITY LOAN
SERVICE CORPORATION OF
WASHINGTON, a Washington
Corporation; FIRST AMERICAN TITLE
INSURANCE COMPANY, a Washington
Corporation; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC., a Delaware
Corporation; and DOE Defendants 1–20,

Defendants.

CASE NO. C10-5523-JCC

ORDER REMANDING CASE

This matter comes before the Court on the parties' joint status report (Dkt. No. 54). Having thoroughly considered the Washington Supreme Court's opinion in *Bain v. Metropolitan Mortgage Group, Inc.*, 285 P.3d 34 (Wash. 2012), and the parties' filings in this case, the Court hereby VACATES its August 31, 2010 order (Dkt. No. 22) and REMANDS this case to King County Superior Court for the reasons explained herein.

1 Plaintiff Kevin Selkowitz filed his original complaint in this matter in King County
2 Superior Court in June 2010. (Dkt. No. 1 Ex. B.) Selkowitz alleged violations of Washington
3 state law and the federal Fair Debt Collection Practices Act (“FDCPA”). (*Id.*) In July 2010,
4 Defendant Quality Loan Services Corporation of Washington removed the case to this Court,
5 alleging federal question jurisdiction under 28 U.S.C. § 1331 over the FDCPA claims and
6 supplemental jurisdiction under 28 U.S.C. § 1367 over the state-law claims. (*Id.* at 1–3.) In
7 August 2010, Defendants First American Title Insurance Company, Litton Loan Servicing LP,
8 and Mortgage Electronic Registration Systems, Inc. (“MERS”) moved to dismiss Selkowitz’s
9 complaint. (Dkt. Nos. 7 & 8.) Selkowitz then filed an amended complaint in which he dropped
10 his FDCPA claims, leaving only state-law claims. (Dkt. No. 9.) Later that month, Selkowitz
11 moved for a temporary restraining order (“TRO”), and to remand the case to state court. (Dkt.
12 Nos. 13 & 14.)

13 The Court granted First American’s, Litton’s, and MERS’ motions to dismiss, as applied
14 to Selkowitz’s amended complaint, and denied Selkowitz’s motions to remand and for a TRO.
15 (Dkt. No. 22.) Selkowitz moved for reconsideration. (Dkt. No. 25.) He urged the Court to
16 exercise its discretion under 28 U.S.C. § 1367(c) to decline to exercise supplemental jurisdiction
17 over his complaint, given that (1) he had voluntarily dismissed the FDCPA claims—the only
18 claims over which the Court had original jurisdiction, (2) from the outset, the FDCPA claims
19 were “dependent upon the interpretation of Washington law for [their] adequacy, as absent a
20 finding that the foreclosure process initiated by Defendants was improper under Washington law,
21 the FDCPA claim[s] could not exist,” (3) the Washington state-law claims predominated in the
22 original complaint and were the only claims remaining in the amended complaint, and (4) those
23 state-law claims “raise[] . . . novel or complex issue[s] of State law,” 28 U.S.C. § 1367(c). (Dkt.
24 No. 25 at 11.)

25 Before ruling on Selkowitz’s motion for reconsideration, the Court stayed all proceedings
26 in this matter and ordered the parties to show cause why the Court should not submit the issue of

1 whether MERS is an authorized “beneficiary” under Washington’s Deed of Trust Act (“DTA”)
2 to the Washington Supreme Court. (Dkt. No. 26 at 2.) The Court observed that “a withdrawal of
3 the Court’s previous order [of dismissal and denying Selkowitz’s motions to remand and for a
4 TRO] may become appropriate.” (*Id.*) In June 2011, the Court certified the MERS-beneficiary
5 issue to the Washington Supreme Court. (Dkt. No. 41.) In August 2012, the Supreme Court
6 issued an opinion answering the certified questions in part. *See Bain*, 285 P.3d 34. This Court
7 then lifted the stay and ordered the parties to file a joint status report. (Dkt. No. 50.)

8 Upon careful consideration of the Washington Supreme Court’s *Bain* decision, this Court
9 finds—as it said it might—that withdrawal of its previous order dismissing Selkowitz’s amended
10 complaint against First American, Litton, and MERS, and denying Selkowitz’s motions to
11 remand and for a TRO, is appropriate. Those Defendants’ motions to dismiss were premised on
12 the argument that “MERS[] [can] hold a Deed of Trust as the beneficiary and . . . agent (or
13 nominee) of the lender.” (Dkt. No. 8 (Defendants Litton’s and MERS’ Motion to Dismiss) at 11.)
14 For example, Defendants relied on that argument for their assertion that “MERS had the
15 authority to appoint Quality Loan Service as successor trustee,” and that Quality Loan Service in
16 turn acted lawfully under Washington’s DTA. (*Id.* at 12.) Defendants also argued that, in order to
17 non-judicially foreclose, “all that matters is that the purported beneficiary be the holder of the
18 note,” and that MERS was such a holder under the DTA. (*Id.* at 13.) The Washington Supreme
19 Court rejected the premise of Defendants’ arguments in *Bain*, answering the certified question,
20 “Is Mortgage Electronic Registration Systems, Inc., a lawful ‘beneficiary’ within the terms of
21 Washington’s Deed of Trust Act, Revised Code of Washington section 61.24.005(2), if it never
22 held the promissory note secured by the deed of trust?” in the negative. 285 P.3d at 37; *see id.* at
23 41–47; *see* Dkt. No. 16 (Plaintiff’s Response to Defendant First American’s Motion to Dismiss)
24 at 6 (“The role of MERS in the subject transaction and its legal interest in the Note and/or Deed
25 of Trust is crucial, because if MERS had no authority to act under the subject Deed of Trust, the
26 arguments of Defendants fail.”). In light of *Bain*, the Court VACATES its August 31, 2010 order

1 (Dkt. No. 22).

2 Outstanding, then, is Selkowitz's first amended complaint (Dkt. No. 9), Defendants'
3 motions to dismiss (Dkt. Nos. 7, 8 & 24), Selkowitz's motion for a TRO (Dkt. No. 13), and
4 Selkowitz's motion to remand (Dkt. No. 14). Selkowitz's first amended complaint (Dkt. No. 9)
5 does not contain a federal cause of action. The Court's jurisdiction over the claims in that
6 complaint (all state-law claims) is thus entirely supplemental, under 28 U.S.C. § 1367. *See St.*
7 *Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 293 (1938). Under § 1367(c)(2),
8 "district courts may decline to exercise supplemental jurisdiction over a claim . . . if . . . the claim
9 substantially predominates over the claim or claims over which the district court has original
10 jurisdiction." And, as demonstrated by the need to certify questions implicated by those claims to
11 the Washington Supreme Court, those claims "raise[] . . . novel or complex issue[s] of State
12 law," another factor militating in favor of declining jurisdiction. 28 U.S.C. § 1367(c)(1). As
13 such, the Court finds that the most appropriate course of action is to decline to exercise
14 supplemental jurisdiction over the claims contained in the first amended complaint, and to
15 remand the case to King County Superior Court.

16 The Court acknowledges Selkowitz's statement in the joint status report that he intends to
17 file a motion for leave to amend his complaint again, to re-plead the federal FDCPA claims.
18 (Dkt. No. 54 at 5 ¶ 3.a.) The Court is puzzled by that statement, given Selkowitz's concurrent
19 statement in the same report that he intends to revise and re-file his motion to remand. (*Id.* at 5–6
20 ¶ 4.a.) In any event, were the Court to grant Selkowitz leave to amend his complaint to add the
21 FDCPA claims, the Court would still decline to exercise supplemental jurisdiction over the state-
22 law claims, because they "raise[] . . . novel or complex issue[s] of State law" and would
23 "substantially predominate[] over the [FDCPA] claim." 28 U.S.C. § 1367(c)(1)–(2).

24 For the foregoing reasons, the Court's August 31, 2010 order (Dkt. No. 22) is
25 VACATED, and, having declined to exercise supplemental jurisdiction over all of the claims in
26 the operative complaint, the Court REMANDS this case to King County Superior Court. A

1 certified copy of this order shall be transmitted without delay to the clerk of the State court.

2 DATED this 14th day of November 2012.

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8 John C. Coughenour
9 UNITED STATES DISTRICT JUDGE
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